

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PETER ATKINS,

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

Case No. C06-5162 RBL

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

This matter is before the Court on Defendant United States' Motion to Dismiss. [Dkt. #10]. At issue is Plaintiff's claim for administrative refund of taxes paid toward his¹ obligations under 11 U.S.C. §6672, for tax periods ending December 31, 1994, March 31, 1995, June 30, 1995, September 30, 1995, and December 31, 1995. Plaintiff paid approximately \$42,000 toward those obligations in December 1999. Mr. Atkins made a claim for an administrative refund of that amount in December, 2004. That claim was denied and he filed this suit on March 28, 2006.


The United States argues that this court does not have subject matter over Plaintiff's claim because his claim for administrative relief was filed more than three years after the subject tax return(s) were filed and more than two years after the tax was paid – the time limit prescribed in 11 U.S.C. §6511(a). Plaintiff's claim plainly does not fall within these time frames.

¹The taxes were actually paid by Atkins as a "responsible person" for taxpayer Aquatic Ventures, a distinction not relevant to the resolution of this case.

1 Plaintiff apparently argues that because he made subsequent payments of penalties pursuant to an
2 agreement with the IRS (in 2005, while the administrative claim was pending) this court should consider his
3 request timely. The logic of this argument is not clear, and no authority is provided for the proposition that
4 a late claim can be resurrected by the payment of a subsequent amount. Furthermore, if and to the extent
5 Plaintiff also seeks a refund of these latter amounts, that claim is barred by his failure to file an administrative
6 claim for those amounts.

7 The United States' Motion [Dkt. #10] is GRANTED and Plaintiff's claims are DISMISSED WITH
8 PREJUDICE.

9 DATED this 3rd day of January, 2007.

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12 RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE